



STEVE WESTLY  
California State Controller

August 4, 2006

Paula Higashi  
Executive Director  
Commission on State Mandates  
900 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

My staff supports the Commission on State Mandates (COSM) staff's current efforts to establish a reasonable reimbursement methodology to streamline both the process by which cities and counties file Peace Officers Procedural Bill of Rights (POBOR) claims and the process by which the State reviews and audits those claims.

However, as evidenced at the May 25, 2006, and July 27, 2006, COSM prehearings, significant disagreements exist among interested parties—including cities and counties and their consultants, COSM staff, the Department of Finance, and the State Controller's Office (SCO)—as to what constitutes a reimbursable activity. Consequently, we believe that, before a reasonable reimbursement methodology can be established, the COSM staff should consider developing amended *Parameters and Guidelines* that clearly identify reimbursable activities. We believe that our June 28, 2006, proposed amendments to the *Parameters and Guidelines* clarify reimbursable activities. In addition, we support the COSM staff's proposed timetable for adopting amended *Parameters and Guidelines* at its October 26, 2006, hearing.

We believe that it would be most productive to develop these amended *Parameters and Guidelines* before considering the proposals submitted by the California State Association of Counties (CSAC) on May 24, 2006, and Los Angeles County on June 15, 2006. Also, we concur with the comment made in the proposal submitted by San Bernardino County on June 15, 2006, stating that reimbursable activities should be clarified prior to settling on a unit amount.

Following are our comments on the CSAC, Los Angeles County, and San Bernardino County proposals. Our comments are based on the definition of reimbursable activities as set forth in the COSM *Statements of Decision, Final Staff Analysis to the Parameters and Guidelines*, and *Parameters and Guidelines*. Our evaluation is also consistent with the position taken by the Bureau of State Audits (BSA) in its audit entitled *State Mandates: The High Level of Questionable Costs Claimed Highlights the Need for Structural Reforms of the Process*, issued October 2003. The BSA audit concluded that only increased costs for activities adopted by the COSM are reimbursable under the mandate; those activities guaranteed by the due process clauses of the U.S. and California Constitutions are not reimbursable.

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The CSAC proposes that a unit cost of \$528 be applied to the number of public safety officers within the claimant's jurisdiction. The CSAC developed the rate by dividing total unaudited amounts claimed statewide for fiscal year 2001-02 by the number of sworn peace officers reported on Peace Officers Standards and Training's year 2000 online statistical report. Our concern with this methodology is that it is based on filed claims rather than on reimbursable activities adopted by the COSM. Because disagreement remains about what constitutes a reimbursable activity, we are concerned that as much as 75% of the \$528 rate may be for activities not reimbursable under POBOR. The CSAC also proposes that a city or county should have the option of using either a reasonable reimbursement methodology or actual costs as a basis of reimbursement. We believe that using actual costs should not be an option if the COSM adopts a reasonable reimbursement methodology.

Los Angeles County proposes to apply a methodology to all cities and counties, based on the results of an invalid time study it conducted for unit-level cases and its estimate of time spent for extended (Internal Affairs Bureau) cases.

- For unit-level cases, the county proposes to apply a standard 12 hours to the number of cases. We do not believe that the result is representative of costs incurred by all cities and counties in California. Furthermore, the time study was not consistent with SCO guidelines or the Bureau of State Audits' standards, as is indicated in the proposal. The time study results were based on only 18 unit-level cases, not the 44 cases selected in the time study plan. Of the 18 cases, only 14 involved POBOR-related activities. Furthermore, we believe that only 2.29 hours relate to reimbursable POBOR activities; the remaining hours relate to ineligible activities occurring prior to cases being assigned to a unit-level investigation and ineligible administrative investigative activities.
- For extended cases, the county proposes to apply 162 standard hours to the number of cases and a \$100 standard rate to the number of peace officers employed on January 1<sup>st</sup> of the claim year. The county did not perform a time study; instead, it estimated the investigators' time by applying a ratio of sworn-to-total cases (inclusive on non-sworn employees). We believe that the county's estimates are not supportable, and, furthermore, include ineligible activities.

San Bernardino County believes that the tracking and reporting requirements identified in the SCO's May 5, 2005, proposed amendments should be streamlined. We concur with San Bernardino County and revised this level of documentation in our June 28, 2006, amendments that superseded and replaced our May 5, 2005, proposal.

The State Controller's staff is eager to continue working with all of the stakeholders to resolve differences in this matter. We again urge the COSM staff to work with the parties to develop amended guidelines defining reimbursable activities that will, in turn, facilitate consensus on a reasonable reimbursement methodology.

If you have any questions, please contact Jim L. Spano, Chief, Compliance Audits Bureau, Division of Audits, at (916) 323-5849.

Sincerely,

*Original signed by:*

MICHAEL CARTER  
Chief Operating Officer

MC:JVB/wm